

FILED

IN THE IOWA DISTRICT COURT FOR DALLAS COUNTY

KELLY SCHAFER,

Plaintiff,

vs.

ELITE EYE CARE, P.C.,

Defendant.

CASE NUMBER: LACV043164

JURY INSTRUCTIONS

MICHAEL JACOBSEN, JUDGE

MAY 30 2023

DALLAS COUNTY
CLERK OF DISTRICT COURT

STATEMENT OF THE CASE

This is a civil case brought by Plaintiff Kelly Schafer against Defendant Elite Eye Care, P.C. Plaintiff alleges that she has a disability in the form of anxiety and depression and alleges multiple claims against Defendant.

1 First, Ms. Schafer alleges that Defendant failed to accommodate her disability.

Second, Ms. Schafer alleges that Defendant denied her a promotion and alleges that her disability and request for accommodation motivated Defendant's decision.

Third, Ms. Schafer alleges that her disability and request for accommodation also motivated Defendant's decision to terminate her employment.

Defendant Elite Eye Care denies these allegations.

Do not consider this summary as proof of any claim. Decide the facts from the evidence and apply the law which I will now give you.

INSTRUCTION NO. 1

My duty is to tell you what the law is. Your duty is to accept and apply this law.

You must consider all of the instructions together because no one instruction includes all of the applicable law. The order in which I give these instructions is not important.

Your duty is to decide all fact questions.

As you consider the evidence, do not be influenced by any personal sympathy, bias, prejudices or emotions. It is common to have hidden or implicit thoughts that help us form our opinions. You are making very important decisions in this case. You must evaluate the evidence carefully. You must avoid decisions based on things such as generalizations, gut feelings, prejudices, fears, sympathies, stereotypes, or inward or outward biases. The law demands that you return a just verdict, based solely on the evidence, your reason and common sense, and these instructions. As jurors, your sole duty is to find the truth and do justice.

INSTRUCTION NO. 2

Nothing I have said or done during the trial was intended to give any opinion as to the facts, proof or what your verdict should be.

INSTRUCTION NO. 3

Whenever a party must prove something, they must do so by the preponderance of the evidence.

Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

INSTRUCTION NO. 4

You shall base your verdict only upon the evidence and these instructions.

Evidence is:

1. Testimony in person or by deposition.
2. Exhibits received by the court.
3. Stipulations which are agreements between the attorneys.
4. Any other matter admitted.

Evidence may be direct or circumstantial. Direct evidence is evidence from a witness who claims actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is evidence about a chain of events which establishes a fact. The law makes no distinction between direct evidence and circumstantial evidence. The weight to be given to any evidence is for you to decide.

Sometimes during a trial, references are made to pre-trial statements and reports, witnesses' depositions, or other miscellaneous items. Only those things formally offered and received by the court are available to you during your deliberations. Documents or items read from or referred to which were not offered and received into evidence, are not available to you.

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Any testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

INSTRUCTION NO. 5

You will decide the facts from the evidence. Consider the evidence using your observations, common sense, and experience. You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part, or none of any witnesses' testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe.
2. The witnesses' appearance, conduct, age, intelligence, memory, and knowledge of the facts; and
3. The witnesses' interest in the trial, their motive, candor, bias, and prejudice.

INSTRUCTION NO. 6

Certain Testimony has been read or played by video into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing. Consider that testimony as if it had been given in court.

INSTRUCTION NO. 7

You have heard evidence claiming that the parties made statements before this trial while under oath and while not under oath.

If you find such a statement was made, you may regard the statement as evidence in this case the same as if the individual had made it under oath during the trial.

If you find such a statement was made and was inconsistent with the individual's testimony during the trial, you may also use the statement as a basis for disregarding all or any part of the individual's testimony during the trial, but you are not required to do so. You should not disregard the individual's testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

INSTRUCTION NO. 8

Plaintiff claims Defendant failed to accommodate her disability. In order for Plaintiff to recover on this claim, she must prove all of the following propositions by a preponderance of the evidence:

1. Defendant knew Plaintiff had a disability in that her mental health substantially limited her in one or more major life activities;
2. Plaintiff requested accommodation for her disability or Defendant knew or should have known that Plaintiff needed accommodation for her disability, in order for Plaintiff to perform the essential functions of the job;
3. Defendant did not make a good faith effort to assist Plaintiff in seeking accommodation; and
4. Plaintiff could have been reasonably accommodated but for Defendant's lack of good faith.

If Plaintiff has failed to prove any of these propositions, then Plaintiff has failed to prove this claim and she is not entitled to damages on this claim. If Plaintiff has proved all of these propositions, then you shall consider the defense of undue hardship as explained in Instruction No. 18.

INSTRUCTION NO. 9

Plaintiff claims Defendant failed to promote her to a team lead position because of her disability or her request for accommodation or both. In order for Plaintiff to recover on this claim, she must prove all of the following propositions by a preponderance of the evidence:

1. Plaintiff suffered from a mental health impairment;
2. Plaintiff's mental health impairment was a disability as defined in instruction No. 12;
3. Defendant denied Plaintiff the promotion to Team Lead;
4. At the time of the denial, Plaintiff was qualified for the position – meaning she was able to do the essential functions of the job, as defined in Instruction No. 15, either with reasonable accommodations or without reasonable accommodations, as defined in Instruction No.16; and
5. Plaintiff's disability or request for accommodation was a motivating factor in Defendant's decision to deny the promotion.

If Plaintiff has failed to prove any of these propositions, then Plaintiff has failed to prove this claim and she is not entitled to damages on this claim.

INSTRUCTION NO. 10

Plaintiff claims Defendant terminated her employment because of her disability or her request for accommodation or both. In order for Plaintiff to recover on this claim, she must prove all of the following propositions by a preponderance of the evidence:

1. Plaintiff suffered from a mental health impairment;
2. Plaintiff's mental health impairment was a disability as defined in instruction No. 12;
3. Defendant terminated Plaintiff's employment
4. At the time of the termination, Plaintiff was qualified for the position – meaning she was able to do the essential functions of the job, as defined in Instruction No. 15, either with reasonable accommodations or without reasonable accommodations, as defined in Instruction No. 16; and
5. Plaintiff's disability or request for accommodation was a motivating factor in Defendant's decision to terminate her employment.

If Plaintiff has failed to prove any of these propositions, then Plaintiff has failed to prove this claim and she is not entitled to damages on this claim.

INSTRUCTION NO. 11

There is evidence that Plaintiff was an employee at-will. An employee at-will may be terminated for any legal reason.

INSTRUCTION NO. 12

An individual has a disability if she has (a) a physical or mental impairment that substantially limits one or more of the major life activities of such individual or (b) been regarded as having such an impairment.

INSTRUCTION NO. 13

As used in these instructions, the term impairment means any mental or psychological disorder such as an intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

INSTRUCTION NO. 14

Major life activities are functions such as, but not limited to, caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. Major life activities includes activities such as squatting, kneeling and crawling. A person is substantially limited in a major life activity if the person is unable to perform a major life activity that the average person in the general population can perform, or is significantly restricted as to the condition, manner or duration under which the average person in the general population can perform the same major life activity. The phrase substantially limits should be interpreted broadly.

To determine whether Plaintiff is substantially limited in any major life activities, you should consider (1) the nature and severity of the impairment, (2) the duration or expected duration of the impairment, (3) the permanent or long-term impact, or the expected permanent or long term impact of or resulting from the impairment, and (4) whether the individual is impaired during episodes or flare-ups, even if life activities are not impaired at all when in remission.

INSTRUCTION NO. 15

As used in these instructions, the term essential functions of a job are the fundamental duties of that job. They are those functions or duties which bear more than a marginal relationship to the job.

In determining whether a job function is essential, you should consider the following factors:

1. The employer's judgment as to which functions of the job are essential;
2. Written job descriptions;
3. The amount of time spent on the job performing the function in question;
4. Consequences of not requiring the person to perform the function;
5. The work experience of persons who have held the job;
6. The current work experience of persons in similar jobs;
7. Whether the reason the position exists is to perform the function;
8. Whether there are a limited number of employees available among whom the performance of the function can be distributed;
9. Whether the function is highly specialized and the individual in the position was hired for his expertise or ability to perform the function;
10. How plaintiff actually functioned in the workplace; and
11. How others with the same job classification actually functioned in the workplace.

No single factor is determinative, and the employer's judgment as to what functions are essential is considered important but not conclusive. You should consider all of the evidence in deciding whether a job function is essential.

INSTRUCTION NO. 16

A reasonable accommodation is a modification to the work environment or to the manner in which an employee's position is usually performed, which would enable a qualified individual with a disability to perform the essential functions of the position.

Examples of reasonable accommodations include:

1. Making existing facilities used by employees readily accessible to and usable by the plaintiff;
2. Job restructuring;
3. Assistance from other employees;
4. Acquisition or modifications of equipment or devices;
5. Reassignment to another position for which the individual is qualified; and
6. Appropriate adjustment or modifications of examinations, training materials, or policies.

In determining whether a suggested accommodation of Plaintiff's disability is reasonable, you must consider not only the disabled employee's needs but also the economic realities faced by Defendants. When an accommodation requires Defendants to change the essential nature of the job, assign essential functions to other employees or imposes more than a negligible cost, then the accommodation is unreasonable.

INSTRUCTION NO. 17

When an employer becomes aware that an employee is disabled and may need an accommodation, the law requires the employer to initiate an informal, interactive process to determine appropriate reasonable accommodations. All that is required to trigger an employer's duty to engage in the interactive process is knowledge (including circumstantial) that the employee may have a condition that may qualify as a disability and result in some limitation that could require an accommodation. An employee need not use any magic words so long as the employer knows of both the disability and the employee's desire for accommodations for that disability.

Once the employer knows of an employee's disability and the employee requests an accommodation, the employer is obligated to participate in the interactive process. To determine whether Elite Eye Care failed to participate in the interactive process, you may consider if (1) Elite Eye Care knew about Ms. Schafer's disability, (2) Ms. Schafer requested accommodations or assistance based upon such disability, (3) Elite Eye Care did not make a good faith effort to assist Ms. Schafer in seeking accommodations, and (4) Ms. Schafer could have been accommodated but for Elite Eye Care's lack of good faith.

The employee is expected to participate and cooperate. This process is meant to be flexible and interactive. Both the employer and the employee should communicate directly, listen to each other, and exchange essential information. The employee is likely to have greater information about his or her disability and the employer is likely to be able to identify potential accommodations that the employee would have no way of knowing about.

Neither side is allowed to delay or obstruct the process. The process should identify the

limitations caused by the employee's disability, as well as potential reasonable accommodations that could overcome those limitations.

INSTRUCTION NO. 18

A Defendant is not required to provide an accommodation if it proves that accommodation would have imposed an undue hardship on the operation of the Defendant's business.

The term undue hardship means an action requiring significant difficulty or expense. It takes into account the financial realities of the particular employer and refers to any accommodation that would be unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the business.

The factors you may consider in deciding whether an accommodation would cause undue hardship on the operation of the employer's business include:

1. The overall size of the employer's program with respect to the number of employees, number and type of facilities, and size of budget;
2. The type of the employer's operation, including the composition and structure of the employer's workforce; and
3. The nature and cost of the accommodation needed.

Concerns that accommodations may harm employee morale are not enough to create an undue hardship on the employer.

If you find that Defendant has proved by the preponderance of the evidence that accommodating Plaintiff's restrictions would have caused an undue hardship on the operation of their business, then Defendant has proven the defense of undue hardship and Plaintiff cannot

recover damages on her claim of failure to accommodate.

If Defendant has failed to prove this defense, Plaintiff is entitled to recover damages in some amount.

INSTRUCTION NO. 19

The fact that a party is a corporation should not affect your decision. All persons are equal before the law, and corporations, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

INSTRUCTION NO. 20

Plaintiff's disability or request for a reasonable accommodation was a motivating factor in the promotion denial or termination if Plaintiff's disability or request for a reasonable accommodation played a part in Defendant's decision. Plaintiff does not have to prove that her disability or request for a reasonable accommodation was the only factor that motivated the promotion denial or termination but must establish that her disability or request for a reasonable accommodation helped to compel the decision. The precise weight that Plaintiff's disability or request for a reasonable accommodation may have played in the decision is not important.

INSTRUCTION NO. 21

If you find that Plaintiff's disability was a motivating factor in the decision to terminate Plaintiff, Elite Eye Care is not liable if it proves it would have made the same decision to terminate even if it had not taken the Plaintiff's disability into account.

INSTRUCTION NO. 22

The fact that I am instructing you on the proper measure of damages should not be considered as any indication that I have any view as to which party is entitled to your verdict in this case. Instructions as to the measure of damages are given only for your guidance in the event you should find Plaintiff is entitled to damages in accordance with other instructions, I have given you.

If you find in favor of Plaintiff Kelly Schafer on her claims, then you must determine an amount that is fair compensation for her damages. You may award compensatory damages only for injuries that Plaintiff proves were caused by the wrongful conduct of Defendant. The damages you award must be fair compensation—no more, no less.

Past Economic Loss: If you find that Plaintiff Kelly Schafer is entitled to damages based on meeting her burden for her claims of discrimination or denial of accommodation then in determining those damages you must award any past earnings and fringe benefits she has lost from the time of Defendant's wrongful conduct to the present.

Keep in mind that absolute precision in proving what an employee would have earned if not for the Defendant's wrongful conduct is not required. Any uncertainties in computing lost wages should be resolved against the Defendants.

Past and Future Emotional Distress: You must determine the amount of damages for any emotional distress sustained by Plaintiff Kelly Schafer. Award her the amount that will fairly and justly compensate her for emotional distress damages you find she sustained as a result of Defendant's wrongful conduct. Damages for emotional distress include damages for emotional pain, suffering, mental anguish, humiliation, fear, apprehension, anxiety, inconvenience, loss to reputation, and loss of enjoyment of life. An employee does not need to introduce evidence of

the monetary value of such damages. The amount you assess for these damages cannot be measured by any exact or mathematical standards. You must use your sound judgment based upon an impartial consideration of the evidence. When considering the amount of monetary damages to which a worker may be entitled for emotional distress, you should consider the nature, character, and seriousness of the emotional pain she felt.

You must also award damages for future emotional distress to an employee if her emotional distress and its consequences can reasonably be expected to continue in the future.

INSTRUCTION NO. 23

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Kelly Schafer is age 82.51. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about Kelly Schafer's health, habits, occupation, and lifestyle, when deciding issues of future damages.

INSTRUCTION NO. 24

Future damages must be reduced to present value. Present value is a sum of money paid now in advance which, together with interest earned at a reasonable rate of return, will compensate the Plaintiff for future losses.

INSTRUCTION NO. 25

In arriving at an item of damage, you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage and agreeing in advance that the average of those estimates shall be your item of damage.

INSTRUCTION NO. 26

You have heard evidence about Plaintiff's receipt of unemployment benefits. Do not speculate on the amounts of any compensation you believe Plaintiff received or deduct any amounts from your calculation of damages. The Court and the attorneys have agreed that the Court will subtract the appropriate amounts of unemployment payments, if any, from any damages you might award for back pay.

INSTRUCTION NO. 27

During the trial you have been allowed to take notes. You may take these with you to the jury room to use in your deliberations. Remember that these are notes and not evidence. Generally, they reflect the recollection or impressions of the evidence as viewed by the person taking them, and may be inaccurate or incomplete.

Upon reaching a verdict, leave the notes in the jury room and they will be destroyed.

INSTRUCTION NO. 28

You may not communicate about this case before reaching your verdict. This includes cell phones, and electronic media such as text messages, Facebook, LinkedIn, YouTube, Twitter, email, etc.

Do not do any research or make any investigation about this case on your own. Do not visit or view any place discussed in this case, and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony. Also, do not research any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the judge. This includes using the Internet to research events or people referenced in the trial.

This case will be tried on evidence presented in the courtroom. If you conduct independent research, you will be relying on matters not presented in court. The parties have a right to have this case decided on the evidence they know about and that has been introduced here in court. If you do some research or investigation or experiment that we do not know about, then your verdict may be influenced by inaccurate, incomplete or misleading information that has not been tested by the trial process, including the oath to tell the truth and by cross-examination. All of the parties are entitled to a fair trial, rendered by an impartial jury, and you must conduct yourself so as to maintain the integrity of the trial process. If you decide a case based on information not presented in court, you will have denied the parties a fair trial in accordance with the rules of this state and you will have done an injustice. It is very important that you abide by these rules.

It is important that we have your full and undivided attention during this trial.

Upon retiring you shall select a foreperson. It will be his or her duty to see discussion is carried on in an orderly fashion, the issues are fully and freely discussed, and each juror is given an opportunity to express his or her views.

Your attitude at the beginning of your deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. If you do this, individual pride may become involved and you may later hesitate to change an announced position even if shown it may be incorrect. Remember you are not partisans or advocates, but judges – judges of the facts. Your sole interest is to find the truth and do justice.

I am giving you one verdict form and questions. During the first six hours of deliberations, excluding meals and recesses outside your jury room, your decision must be unanimous. If you all agree, the verdict and questions must be signed by your foreperson.

After deliberating for six hours from 2:00 o'clock p.m., excluding meals or recesses outside your jury room, then it is necessary that only six of you agree upon the answers to the questions. In that case, the verdict and questions must be signed by all six jurors who agree.

When you have agreed upon the verdict and interrogatories and appropriately signed it, tell the court attendant.

Dated this 26th day of May, 2023.



**Michael Jacobsen – District Court Judge
Fifth Judicial District of Iowa**

IN THE IOWA DISTRICT COURT FOR DALLAS COUNTY

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